



[Billing Code: 6750-01-S]

FEDERAL TRADE COMMISSION

16 CFR Part 303

Rules and Regulations Under the

Textile Fiber Products Identification Act

**AGENCY:** Federal Trade Commission (“FTC” or “Commission”).

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** Based on comments received in response to its Advance Notice of Proposed Rulemaking (“ANPR”), the Commission proposes amending the rules and regulations under the Textile Fiber Products Identification Act (“Textile Rules” or “Rules”) to: incorporate the updated ISO standard 2076:2010(E); allow certain hang-tags that do not disclose the product’s full fiber content information; better address electronic commerce by amending the definition of the terms invoice and invoice or other paper; update the guaranty provisions by, among other things, replacing the requirement that suppliers provide a guaranty signed under penalty of perjury with a certification that must be renewed annually, and revising accordingly the form used to file continuing guaranties with the Commission under the Textile, Fur, and Wool Acts; and clarify several other provisions. The Commission seeks comment on these proposals and several remaining issues.

**DATES:** Written comments must be received on or before July 8, 2013.

**ADDRESSES:** Interested parties may file a comment online or on paper by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write “Textile Rules, 16 CFR Part 303, Project No. P948404” on your comment, and file your comment online at <https://ftcpublic.commentworks.com/ftc/textilerulesnprm> by

following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H-113 (Annex G), 600 Pennsylvania Avenue, NW, Washington, DC 20580. **FOR FURTHER INFORMATION CONTACT:** Robert M. Frisby, Attorney, (202) 326-2098, and Amanda Kostner, Attorney, (202) 326-2880, Federal Trade Commission, Division of Enforcement, Bureau of Consumer Protection, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

## **SUPPLEMENTARY INFORMATION:**

### **I. INTRODUCTION**

The Textile Fiber Products Identification Act (“Textile Act”)<sup>1</sup> and Rules require marketers to, among other things, attach a label to each covered textile product disclosing: (1) the generic names and percentages by weight of the constituent fibers in the product; (2) the name under which the manufacturer or other responsible company does business or, in lieu thereof, the company’s registered identification number (“RN number”); and (3) the name of the country where the product was processed or manufactured.<sup>2</sup> As part of its ongoing regulatory review program, the Commission published an ANPR in November 2011 seeking comment on the economic impact of, and the continuing need for, the Textile Rules; the benefits of the Rules to consumers; and the burdens the Rules place on businesses.<sup>3</sup> The ANPR also sought comment on specific issues, including whether the Commission should amend the Rules to incorporate the revised version of International Organization for Standardization (“ISO”) standard entitled

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<sup>1</sup> 15 U.S.C. 70 *et seq.*

<sup>2</sup> *See* 15 U.S.C. 70b(b).

<sup>3</sup> *Federal Trade Commission: Rules and Regulations Under the Textile Fiber Products Identification Act*, 76 FR 68690 (Nov. 7, 2011).

“Textiles—Man-made fibres—Generic names,” 2076:1999(E), clarify disclosure requirements for products containing elastic material and trimmings, clarify disclosure requirements for written advertising, and modify the Rules’ guaranty provisions.

This Notice of Proposed Rulemaking (“NPRM”) summarizes the comments received, explains the Commission’s decision to retain the Rules, proposes several amendments, and explains why the Commission has declined to propose certain amendments. It also solicits additional comment, and provides analyses under the Regulatory Flexibility Act and the Paperwork Reduction Act. Finally, the NPRM sets forth the Commission’s proposed amendments to the Rules.

## **II. SUMMARY OF COMMENTS**

The Commission received 17 comments<sup>4</sup> in response to the ANPR from individuals,<sup>5</sup> a fabric manufacturer,<sup>6</sup> trade associations representing industries affected by the Textile Rules,<sup>7</sup> textile compliance and testing entities,<sup>8</sup> and a retailer.<sup>9</sup> The comments indicated widespread support for the Textile Rules. For example, the joint comment of eight textile trade associations

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<sup>4</sup> The comments are posted at <http://www.ftc.gov/os/comments/textilerulesanpr/index.shtml>. The Commission has assigned each comment a number appearing after the name of the commenter and the date of submission. This notice cites comments using the last name of the individual submitter or the name of the organization, followed by the number assigned by the Commission.

<sup>5</sup> Lunde (10), Nitaki (7), and Robledo (11).

<sup>6</sup> Classical Silk, Inc. (13).

<sup>7</sup> Joint comment (18) of the American Apparel and Footwear Association (“AAFA”), the American Fiber Manufacturers Association, Inc. (“AFMA”), American Manufacturing Trade Action Coalition (“AMTAC”), the Canadian Apparel Federation (“CAF”), the National Council of Textile Organizations (“NCTO”), the National Retail Federation (“NRF”), the National Textile Association (“NTA”), and the U.S. Association of Importers of Textiles and Apparel (“USA-ITA”). Five of these industry associations also filed individual comments: AAFA (17), CAF (19), NRF (20), NTA (15), and USA-ITA (14).

<sup>8</sup> Bureau Veritas (9), Compliance & Risks, Ltd. (“C&R”) (6), Consumer Testing Laboratories (12), McNeese Customs & Commerce (“McNeese”) (4), and Vartest Laboratories, Inc. (“Vartest”) (3).

<sup>9</sup> IKEA North America Services, LLC (“IKEA”) (5).

(“joint comment”) stated that the use of labels on textiles and apparel benefits consumers and businesses.<sup>10</sup> The comments, however, recommended that the Commission modify or clarify requirements pertaining to fiber content disclosures, country of origin, and the identification of manufacturers in various ways.

In connection with fiber content disclosures, the joint comment and six others supported amending section 303.7 to incorporate the revised ISO standard for man-made fiber names, ISO 2076:2010(E).<sup>11</sup> Six also requested that the Commission clarify provisions relating to fiber content disclosures for trimmings and *ornamentation*.<sup>12</sup> In addition, the joint comment and three others requested that the Commission modify fiber content disclosure requirements when fiber trademarks or fiber performance characteristics appear on hang-tags and other point-of-sale materials.<sup>13</sup>

In connection with country-of-origin disclosures, one comment requested that the Commission explain the interplay between the Textile Rules and U.S. Customs country-of-origin regulations to clarify that the country-of-origin disclosure pursuant to the Rules is consistent with the Customs regulations.<sup>14</sup> In connection with the identification of manufacturers, four urged the

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<sup>10</sup> Joint comment (18). Two comments from individuals, Nitaki (7) and Robledo (11), expressed concern about the costs of textile regulations, especially on small businesses.

<sup>11</sup> Joint comment (18), AAFA (17), CAF (19), NRF (20), NTA (15), USA-ITA (14), and C&R (6).

<sup>12</sup> Bureau Veritas (9), Consumer Testing Laboratories (12), USA-ITA (14), AAFA (17), CAF (19), and NRF (20).

<sup>13</sup> Joint comment (18), AAFA (17), NTA (15), and USA-ITA (14).

<sup>14</sup> USA-ITA (14).

Commission to recognize Canadian registered identification numbers (“CAs”) as alternative identification.<sup>15</sup>

The comments also made more general recommendations that did not focus on specific required disclosures. For example, the comments urged the Commission to make the Rules more pertinent to the current textile industry. One such comment asked the Commission to amend the Rules to add and revise defined terms relating to the electronic fulfillment processes widespread in the textile industry (*i.e.*, by including a definition of *electronic agent* and modifying the definition of *invoice or other paper* in the Rules).<sup>16</sup> This comment also urged the Commission to make various changes to the Textile Rules’ guaranty provisions, in part to address the fact that most textiles are now imported.

Other comments suggested amendments of a technical nature (*e.g.*, simplifying potentially confusing phrasing in various provisions of the Rules). For example, six expressed strong support for multiple-language disclosures on textile labels to foster international trade.<sup>17</sup> One urged the Commission to define acceptable formats for making such disclosures.<sup>18</sup> Other comments advocated modifications to FTC consumer and business education materials related to textiles, including the addition of examples of compliant disclosures (*e.g.*, disclosures relating to decoration or *ornamentation*).<sup>19</sup>

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<sup>15</sup> AAFA (17), CAF (19), NRF (20), and USA-ITA (14).

<sup>16</sup> NRF (20).

<sup>17</sup> AAFA (17), Bureau Veritas (9), CAF (19), C&R (6), McNeese (4), and USA-ITA (14).

<sup>18</sup> Bureau Veritas (9).

<sup>19</sup> *E.g.*, C&R (6) and AAFA (17).

### **III. RETENTION OF THE RULES**

As part of the Commission's systematic regulatory review, the ANPR asked whether there is a continuing need for the Rules as currently promulgated and requested comment about the Rules' benefits and costs. The record shows wide support for the Textile Rules from the textile industry. Among other things, comments supporting the Rules explained that they benefit both businesses and consumers, help consumers make informed purchasing decisions, and prevent deceptive marketing.<sup>20</sup> Moreover, a rule is necessary to implement the Textile Act and thus the Commission lacks the discretion to rescind the Rules.

Two comments from individuals that expressed concern about overregulation of textile products failed to provide any tangible evidence to support their assertions.<sup>21</sup> There is no evidence in the record showing that the Rules impose excessive costs on industry, including small businesses, or that the disclosures required by the Rules are not important or material to consumers.

### **IV. PROPOSED AMENDMENTS**

Based on the record and the Commission's experience, the Commission proposes several amendments as explained below.<sup>22</sup> The Commission also explains why it declines to propose several other amendments.

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<sup>20</sup> Joint comment (18), AAFA (17), CAF (19), and NTA (15).

<sup>21</sup> Nitaki (7) and Robledo (11).

<sup>22</sup> Two comments recommended amendments to the Textile Act. Bureau Veritas recommended revising the Textile Act to allow for the naming of fibers present in amounts less than 5% regardless of whether the fibers have a structural significance. Adam Varley recommended adding yak fibers to the definition of wool under the Act, which also would require an amendment to the Wool Act because the definition of wool comes from the Wool Act. Neither commenter provided evidence that the benefits of the proposed amendments, which would require new legislation, would exceed their costs.

## **A. Fiber Content Disclosures**

The Commission proposes the following amendments to the Rules' fiber content disclosures: (1) revising section 303.7 to incorporate the updated ISO standard establishing generic fiber names for manufactured fibers; (2) clarifying section 303.12(a) concerning disclosures involving trimmings; (3) revising section 303.17(b) to allow certain hang-tags disclosing fiber names and trademarks, and performance information, without disclosing the product's full fiber content; and (4) clarifying section 303.35, describing products containing virgin or new wool, and sections 303.41 and 303.42, addressing fiber content disclosures in advertising. This section also explains why the Commission declines to propose certain amendments relating to fiber content advocated by comments.

### **1. International Standards and Regulations**

The Commission proposes to amend the Rules to incorporate the revised ISO standard for man-made fiber names. The Commission, however, declines to propose any amendments to further align the Rules with textile regulations in other countries.

#### **a) The Updated ISO Standard for Man-Made Fiber Names**

Section 303.7 (generic names and definitions for manufactured fibers) establishes the generic names for manufactured fibers to be used in the fiber content disclosures required by the Textile Act and Rules. This section establishes such names in two ways. First, it includes the generic names and definitions that the Commission has established through its textile petition process. Second, it establishes through incorporation by reference the generic names and definitions set forth in the ISO standard entitled "Textiles—Man-made fibres—Generic names,"

2076:1999(E). Since the Commission incorporated ISO 2076:1999(E) into section 303.7 in 2000, the ISO standard has been updated, and is now identified as ISO 2076: 2010(E).<sup>23</sup>

The comments expressed strong support for modifying section 303.7 to incorporate the revised international standard for man-made fiber names.<sup>24</sup> The joint comment noted that the ISO standard benefits businesses by establishing an international consensus that removes unnecessary barriers to trade. USA-ITA stated that the ISO standard helps its members develop labeling that satisfies the requirements of multiple countries. AAFA noted that the ISO standard would reduce Customs challenges. NRF stated that the Commission’s adoption of the ISO standard would help forestall nationally-biased standards that often create barriers to trade and hinder efficient supply-chain management. C&R supported the modification as a way of addressing frequent inquiries from retailers, manufacturers, and brand companies relating to the standard.

Easing barriers to trade was one of the reasons for incorporating the previous version of the international standard into section 303.7 and remains an important priority for the Commission. Incorporating the updated standard would further this goal by permitting more internationally-recognized fiber names. In addition, updating the Rules would promote efficiency by reducing the need for industry members to petition the Commission to recognize new fiber names on a piecemeal basis. Accordingly, the Commission proposes to amend section 303.7 to incorporate the revised ISO standard ISO 2076:2010(E), “Textiles—Man-made fibres—Generic names.”

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<sup>23</sup> The revised standard differs from the previous version in various ways; for example, it establishes *rayon* as an alternate name for the existing name *viscose*; establishes *spandex* as an alternate name for the existing name *elastane*; changes the name *metal fibre* to *metal*; and establishes the following new generic names: *elastomultiester* or *elasterell-p*; *polylactide* or *PLA*; and *elastolefin* or *lastol*.

<sup>24</sup> Joint comment (18), AAFA (17), CAF (19), NRF (20), NTA (15), USA-ITA (14), and C&R (6).



The Commission notes that section 303.7 and the revised ISO standard define certain fiber names slightly differently. For example, section 303.7 includes *elasterell-p* as a subclass of *polyester*,<sup>25</sup> while the ISO standard includes *elasterell-p* as an alternate name for *elastomultiester*.<sup>26</sup> Similarly, section 303.7 includes *lastol* as a subclass of *olefin*,<sup>27</sup> while the ISO standard includes *lastol* as an alternate name for *elastolefin*.<sup>28</sup> The comments do not suggest that these differences present an obstacle to incorporating the ISO standard into section 303.7 or warrant any other amendments to that section. However, the Commission seeks comment on whether these differences present any problems and, if so, how the Commission should address them.

USA-ITA recommended that the Commission further amend section 303.7 to automatically incorporate future changes to the ISO standard to eliminate the need to amend section 303.7 each time the standard changes. However, the Textile Act directs the Commission to establish the generic names of manufactured fibers.<sup>29</sup> Pursuant to this responsibility, the Commission cannot preapprove generic names that may be added to the ISO standard in the future. Nor can the Commission delegate its responsibility to establish fiber names to a standard

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<sup>25</sup> 16 CFR 303.7(c)(1).

<sup>26</sup> ISO 2076:2010(E) defines *elastomultiester* or *elasterell-p* as follows: Fibre formed by the interaction of two or more chemically distinct linear macromolecules in two or more phases (of which none exceeds 85% by mass), which contains ester groups (at least 85%) as the dominant function and suitable treatment, and which, when stretched by 50% and released, durably and rapidly reverts substantially to its unstretched length.

<sup>27</sup> 16 CFR 303.7(m).

<sup>28</sup> ISO 2076:2010(E) defines *elastolefin* or *lastol* as follows: Fibre composed of at least 95% by mass of partially cross-linked macromolecules, made up from ethylene and at least one other olefin, which, when stretched to one and a half times its original length and released, reverts rapidly and substantially to its initial length.

<sup>29</sup> 15 U.S.C. 70e(c).

setting organization such as the ISO.<sup>30</sup> The Commission therefore declines to propose this amendment.

#### **b) International Regulations**

To further ease trade barriers, the comments supported harmonizing the Textile Rules with regulations of other countries. USA-ITA stated that differing national labeling requirements inhibit U.S. companies from selling textile products in international markets, and suggested that the Commission consider recognizing international labeling requirements. CAF stated that the review of the Textile Rules is an excellent opportunity for the U.S. and Canada to harmonize labeling requirements. In addition, IKEA recommended that the FTC consider European Union Regulation (EU) No 1007/2011, and “align the US rules to the new EU regulation as much as possible, especially in regards to accepted fiber names and tolerances for fiber content.” The comments promoting harmonization were very general and either did not discuss how the Commission should change the Textile Rules to further reduce barriers to trade, or did not discuss how specific international labeling requirements relate to the requirements of the Textile Rules or whether they are consistent with the Textile Act.

The Commission declines to propose aligning the Textile Rules more closely with EU regulations. The Rules and EU regulations already substantially overlap. Specifically, all but five of the generic fiber names for man-made fibers in the EU regulations also appear in the

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<sup>30</sup> Moreover, the Federal Register mandates that all materials to be incorporated by reference in regulatory text must be specifically identified by title, date, edition, author, publisher, and identification number of the publication. Automatic incorporation into the Textile Rules of future changes to an ISO or any other industry standard would be inconsistent with this requirement. *See generally*, National Archives and Records Administration, Office of the Federal Register, “Federal Register Document Drafting Handbook,” ch. 6 at p. 5 (Jan. 2011 revision) available at <http://www.archives.gov/federal-register/write/handbook/chapter-6.pdf>.

proposed Rules.<sup>31</sup> With respect to fiber tolerances (*i.e.*, permissible deviations from specified fiber percentages), the Rules already allow the same tolerance as the EU regulations for textile products containing multiple fibers.<sup>32</sup>

Additionally, the record does not support further harmonization. For example, it does not address whether differences between the Rules and EU regulations create problems for industry, or whether the benefits of further harmonization exceed the costs. Moreover, unlike the unanimous support for incorporating the latest ISO standard, which reflects a long-standing international consensus, further harmonization with the EU regulation was supported by only one commenter. Two comments urged greater international harmonization. One urged greater harmonization generally. The other sought increased consistency between Canadian and United States labeling. Neither, however, proposed specific changes or provided evidence regarding the problems caused by the lack of harmonization. Moreover, neither indicated whether the benefits of further harmonization would exceed the costs.

## **2. Trimmings and Ornamentation**

The Textile Act and Rules exempt trimmings and *ornamentation* from the fiber content disclosure requirement under certain circumstances,<sup>33</sup> and require that the fiber content

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<sup>31</sup> The EU regulations recognize the following generic fiber names which do not appear in either section 303.7 or the ISO standard: *protein*, *polycarbamide*, *polyurethane*, *triviny*, and *polypropylene/polyamide bicomponent*. However, ISO 2076:2010(E) includes *polypropylene* and *polyamide* as separate generic fiber names.

<sup>32</sup> The Commission lacks the authority to reconcile the Rules with the EU regulations on tolerances for products containing a single fiber. The Textile Act authorizes the Commission to set tolerances only for products that contain multiple fibers. 15 U.S.C. 70b(b)(2). Section 303.43 of the Rules (Fiber content tolerances) implements this statutory provision, and provides that products containing more than one fiber are not misbranded if the fiber content does not deviate from the stated percentages by more than 3% of the total fiber weight.

EU regulations allow the same tolerance for multi-fiber textile products. *See* EU regulation No. 1007/2011, Article 20 (Tolerances), paragraph 3. Unlike the Rules, the EU regulations also allow a tolerance of 2-5% even when products have labels indicating that they consist of a single fiber. *See* EU regulation No. 1007/2011, Article 7 (Pure textile products), paragraph 2.

disclosure state that it does not apply to trimmings or *ornamentation*.<sup>34</sup> Six comments stated that the Rules relating to trimmings and *ornamentation* overlap and create confusion.<sup>35</sup> These comments proposed four amendments and a clarification. The Commission addresses each below.

First, Consumer Testing Laboratories recommended that the Commission define “minor proportion” in the description of trimmings<sup>36</sup> because “the challenge for the industry is in determining what is considered minor proportion.” However, the comment did not propose any particular definition, and it is the experience of the Commission that the absence of a definition of this term has not posed significant problems. Furthermore, the limited inquiries received by the Commission regarding this phrase indicate that its application to particular textile products is fact-specific, and that the phrase allows necessary flexibility. In addition, none of the other comments urged the Commission to address this issue. Therefore, the Commission declines to propose amending this section to define “minor proportion.” The Commission notes that interested parties may seek advice from Commission staff, or consult educational materials published by the Commission.

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<sup>33</sup> Section 303.12 exempts trimmings that consist of decoration or elastic findings if they do not exceed 15 or 20 percent, respectively, of the product’s surface area. Section 303.26 exempts *ornamentation* from the fiber content disclosure requirement if it does not exceed 5% of the total fiber weight of the product. As long as no representation is made about the fiber content of the trimmings or *ornamentation*, a fiber content disclosure is not required under these circumstances.

<sup>34</sup> Specifically, section 303.12 requires that the fiber content disclosure for a product containing exempted trimmings include a statement that the disclosure is “exclusive of decoration” or “exclusive of elastic.” Similarly, section 303.26 requires that the fiber content disclosure for a product containing exempted *ornamentation* include a statement that the disclosure is “exclusive of ornamentation.”

<sup>35</sup> Bureau Veritas (9), Consumer Testing Laboratories (12), USA-ITA (14), AAFA (17), CAF (19), and NRF (20).

<sup>36</sup> Section 303.12(a) of the Rules provides, in part, that trimmings may include elastic materials and threads inserted or added to the product *in minor proportion* for holding, reinforcing or similar structural purposes.

Second, USA-ITA recommended that the Commission amend section 303.12 to clarify that elastic material is not a “finding” if it exceeds 20 percent of the surface area of a household textile article. The Commission, however, finds that section 303.12 is sufficiently clear. Under section 303.12, trim clearly includes both “findings” and certain elastic material that does not exceed 20 percent of the surface area.<sup>37</sup> Thus, the Rules are clear that elastic material is not a “finding” or any other type of trim if it exceeds 20 percent of the surface area. In addition, the comments did not present any evidence that the provision has resulted in general confusion. The Commission therefore declines to propose this amendment.

Third, USA-ITA advocated amending the Rules to eliminate the fiber content disclosure for embroidery or other decoration on the interior of garments. Section 303.12(a) does not require a fiber content disclosure for decorative trim, whether applied by embroidery, overlay, applique, or attachment; or decorative patterns or designs which are an integral part of the fabric if the decorative trim or decorative pattern or design does not exceed 15 percent of the surface area of the article. If the embroidery or decoration exceeds this threshold, consumers may well regard the fiber content as material regardless of where it appears in the product. USA-ITA did not present any evidence showing otherwise. The Commission therefore declines to propose this amendment.

Fourth, NRF stated that when a textile product contains trimmings, elastic, and *ornamentation*, separately disclosing that each of these parts are excluded is excessive and does not provide meaningful information. NRF therefore recommended that the Commission amend the Rules to require only one statement. The Commission declines to propose this amendment because the Rules do not mandate the repetition of the phrase “exclusive of” (*e.g.*, “exclusive of

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<sup>37</sup> 16 CFR 303.12(b) .

elastic,” “exclusive of ornamentation”) as NRF suggests. Rather, the Rules do not prohibit and therefore already allow such disclosures to be made in one statement (*e.g.*, “exclusive of elastic and ornamentation”).<sup>38</sup>

Fifth, Bureau Veritas stated that where textile decoration is made of the same fiber blend as the fabric to which it is attached, although in different proportions, requiring the phrase “exclusive of decoration” may be unwarranted. Bureau Veritas requested that the FTC clarify the reason for using “exclusive of decoration” in that instance. The Commission notes that the disclosure is necessary because, if the decoration’s fiber content differs in proportions from the fabric’s fiber content, the fiber content disclosure for the fabric would not accurately describe the decoration’s or the garment’s fiber content. However, when the fabric’s fiber content is the same as the decoration’s fiber content, the Commission agrees that the Rules would not require the “exclusive of decoration” statement. The Commission proposes amending section 303.12 to clarify this point.

Although it declines to propose some of these suggested changes, the Commission proposes amending section 303.12 to clarify when the Textile Act and Rules exempt trimmings from fiber content disclosures. As described above, section 303.12 currently describes trimmings and the conditions for exempting trim from disclosure requirements, but does not expressly state that trim is generally exempt. The Commission proposes amending section 303.12 to remedy this omission.

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<sup>38</sup> Furthermore, when a textile product has a component or feature that falls under the description of trimmings under section 303.12 and the definition of *ornamentation* under sections 303.1(q) and 303.26, nothing in the Rules prohibits making a single disclosure “exclusive of decoration” or “exclusive of ornamentation.”

Specifically, the Commission proposes amending section 303.12 to clarify that: (1) section 12 of the Textile Act exempts trimmings; (2) exempt trimmings do not include decorative trim, decorative patterns and designs, and elastic material in findings that exceed the surface area thresholds described later in section 303.12; and (3) if the fiber content of exempt trimmings consisting of decorative trim or decoration differs from the fabric's fiber content, the fiber content of the fabric shall be followed by the statement "exclusive of decoration."

Finally, as recommended by AAFA, the Commission staff will continue to provide advice and educational materials on how to properly label products with decorative trim and *ornamentation*.

### **3. Disclosure Requirements Applicable To Hang-Tags and Advertisements**

The Rules allow disclosure of non-deceptive fiber trademarks in conjunction with the generic name of each such fiber, and address how labels disclose these fiber trademarks. In particular, section 303.17(b) provides that a label using a generic name or a fiber trademark must disclose full and complete fiber content the first time the generic name or fiber trademark appears on the label. Similarly, sections 303.41 and 303.42 address fiber content disclosures in advertising, including point-of-sale advertising. These sections require a fiber content disclosure, including the generic name of the fiber, in advertising that uses a fiber trademark.

The joint comment of eight trade associations urged the Commission to modify the Rules to allow the use of hang-tags and other point-of-sale ("POS") materials relating to fiber trademarks and performance without requiring disclosure of full fiber content information.<sup>39</sup> The joint comment did not urge the Commission to amend any particular section of the Rules.

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<sup>39</sup> Joint comment (18).

However, two of the eight trade associations also submitted a separate comment urging the Commission to amend section 303.17 to address this issue.<sup>40</sup>

The joint comment and AAFA stated that the requirement that a full fiber content disclosure be made whenever a fiber trademark is used on a label (*e.g.*, on hang-tags) is unnecessary for consumers and a burden on fiber producers. AAFA stated that requiring fiber percentages on hang-tags is redundant since the information is mandated on the required textile label. The joint comment, AAFA, and USA-ITA stated that fiber manufacturers often create hang-tags to provide important information about the performance characteristics and attributes of their fibers (*e.g.*, the fiber's ability to stretch, its recycled content, the UV protection it provides, its moisture management characteristics, and its antimicrobial properties). However, fiber manufacturers may not know the final composition of the fabric or garment made with their fibers at the time they create these hang-tags. The final composition of the fabric or garment is determined by fabric manufacturers and apparel assemblers.

Therefore, the comments asserted that section 303.17 inhibits them from creating hang-tags to provide consumers with important fiber performance information. Instead of requiring a full fiber content disclosure, the comments recommended that the Textile Rules prohibit deceptive representations about fiber content on hang-tags and POS materials.<sup>41</sup>

The Commission agrees. Section 303.17(b) may well discourage the non-deceptive use of fiber trademarks and truthful fiber performance representations on hang-tags. Furthermore, the Commission does not see any reason to prevent fiber, fabric, or garment manufacturers from

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<sup>40</sup> AAFA (17) and USA-ITA (14).

<sup>41</sup> Joint comment (18), AAFA (17), NTA (15), USA-ITA (14), C&R (6).



creating hang-tags to provide consumers with truthful non-deceptive information, provided the product has a label with full fiber content information as required by the Act and the Rules.

Allowing such hang-tags could also lower compliance costs because the tags would not have to include the full fiber content information. The Commission proposes to amend section 303.17(b) accordingly.

The Commission notes, however, that under some circumstances hang-tags without full fiber content information might mislead consumers if consumers mistakenly believe that the hang-tag provides full fiber content information. For example, a consumer reading a garment hang-tag with the trademark for a rayon fiber might incorrectly conclude that the product consists entirely of rayon.

To address this concern, the Commission proposes amending section 303.17(b) to provide that hang-tags stating a fiber generic name or trademark must disclose clearly and conspicuously that the hang-tag does not provide the product's full fiber content unless the product's full fiber content is disclosed on the hang-tag or if the product is entirely composed of that fiber. Proposed section 303.17(b) provides two examples of compliant disclosures: "This tag does not disclose the product's full fiber content" and "See label for the product's full fiber content."

The joint comment also proposed that the Commission amend the rules to allow POS materials other than hang-tags to disclose fiber trademarks and performance without requiring disclosure of full fiber content information. However, the Textile Act requires that any written advertisement used to promote, sell or offer the product for sale disclose the product's full fiber

content (although it need not disclose fiber percentages).<sup>42</sup> Therefore, the Commission does not propose to amend sections 303.41 or 303.42 to allow POS advertising to disclose fiber trademarks and performance without requiring a fiber content disclosure.<sup>43</sup>

Apart from the absence of statutory authority, the Commission notes that practical considerations warrant different treatment of hang-tags and advertisements. Hang-tags are affixed to the product, and likely are in relatively close proximity to the required labels disclosing the product's full fiber content. Therefore, a consumer examining a textile fiber product could read any labels and hang-tags at the same time the consumer considers purchasing the product. Because the required label disclosing the product's full fiber content is, like the hang-tag, affixed to the product, there is no need for, and the Act does not require, the hang-tag to disclose the product's full fiber content with, or without, the fiber percentages.

In contrast, advertisements not affixed to the product have no such likely proximity to the product. A consumer reviewing such advertisements without access to the product would not necessarily be able to review any labels disclosing the product's full fiber content at the same time the consumer considers the advertisements.

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<sup>42</sup> 15 U.S.C. 70b(c) ("a textile fiber product shall be considered to be falsely or deceptively advertised if any disclosure or implication of fiber content is made in any written advertisement which is used to aid, promote, or assist directly or indirectly in the sale or offering for sale of such textile fiber product" unless the fiber content disclosure "is contained in the heading, body, or other part of such written advertisement, except that the percentages of the fiber present in the textile fiber product need not be stated").

<sup>43</sup> Although hang-tags ordinarily constitute advertising, the Textile Act distinguishes between a "stamp, tag, label, or other means of identification" affixed to the product and a "written advertisement." Each product must have a "stamp, tag, label, or other means of identification" that discloses the full fiber content, but in contrast to written advertisements, the Act does not require that each such "tag" or "label" make a full fiber content disclosure. *See* 15 U.S.C. 70b(b) and (c).

#### **4. Clarifications of Sections Relating to “Virgin” or “New” Fibers and Disclosures in Advertising**

Based on informal inquiries received over the years, the Commission proposes clarifying sections 303.35, 303.41, and 303.42. None of the proposed clarifications involve a substantive change.

##### **a) New or Virgin Fiber**

Section 303.35 states that the terms “virgin” or “new” should not be used to describe a product or any fiber or part thereof when the product or part so described is not wholly virgin or new. Although this section governs descriptions of any “product, or any *fiber* or part thereof,” (emphasis added), it only expressly allows the use of the terms “virgin” or “new” in connection with “the product or part so described,” not the “fiber.”<sup>44</sup> In other words, this provision literally prohibits truthful fiber content claims for virgin or new fiber. Prohibiting such truthful claims does not advance the goals of the Textile Act or protect consumers from deception, and prohibiting such claims was not the Commission’s intent when it promulgated this provision.

Accordingly, the Commission proposes to amend section 303.35 by adding the word “fiber” as set forth in section X below so that it states that the terms virgin or new shall not be used when the product, *fiber* or part so described is not composed wholly of new or virgin fiber.

##### **b) Advertising Disclosures**

Section 303.41(a) provides that the use of a fiber trademark in an advertisement shall require a full disclosure of the fiber content information at least once in the advertisement. In

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<sup>44</sup> For example, a product or part containing 50% new fibers could not be described as containing 50% “new” fibers because the product or part is not composed wholly of such fibers.

other words, the use of a fiber trademark triggers the Rule’s fiber content disclosure. In contrast, this section does not require a full disclosure of fiber content information when a generic fiber name is used. This distinction conflicts with the Act, which requires such a disclosure in advertisements that disclose or imply fiber content.<sup>45</sup> Accordingly, to conform the Rules to the Act, the Commission proposes to amend section 303.41(a) to state that the use of a fiber trademark or a generic fiber name in an advertisement shall require a full disclosure of the fiber content information required by the Act and regulations at least once in the advertisement.

Section 303.42(a) also addresses the content and format of fiber disclosures in advertising. This provision implements the Textile Act’s requirement that written textile fiber product advertisements disclosing or implying the presence of a fiber also disclose the product’s full fiber content, “except that the percentages of the fiber present in the textile fiber product need not be stated.”<sup>46</sup> Section 303.42 implements this requirement but fails to explicitly state that advertising need not state the fiber percentages. Accordingly, the Commission proposes to amend the second sentence in section 303.42(a) by adding the following phrase: “except that the advertisement need not state the percentage of each fiber.”

## **B. Country-of-Origin Disclosures**

Section 303.33 effectuates the Textile Act’s requirement that textile fiber products have labels disclosing the country where they were processed or manufactured. Section 303.33(a) provides sample disclosures for products completely made in the United States, products made in the United States using imported materials, and products partially manufactured in a foreign country and partially manufactured in the United States.

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<sup>45</sup> See 15 U.S.C. 70b(c).

<sup>46</sup> See 15 U.S.C. 70b(c).

For the purpose of determining where an imported product was processed or manufactured (*i.e.*, the country of origin), section 303.33(d) provides that the country where the imported product was principally made shall be considered to be the country where such product was processed or manufactured. It also provides that further work or material added to the product in another country must effect a basic change in form to render such other country the place where such product was processed or manufactured.

USA-ITA urged the Commission to consider revising section 303.33(d) to state that the country where imported products were processed or manufactured (*i.e.*, country of origin) is determined under the trade laws (*i.e.*, Customs laws) requiring country-of-origin labeling on imported products. USA-ITA argued that there is a conflict between the very detailed trade laws, specifically 19 U.S.C. 3592, and the more general country-of-origin rule in section 303.33(d).

The Commission recognized the interplay between the Rules and the Customs laws when it first promulgated the Rules in 1959.<sup>47</sup> Indeed, the Rules state that “[n]othing in this rule shall be construed as limiting in any way” the disclosures required by “any Tariff Act of the United States or regulations prescribed by the Secretary of the Treasury.”<sup>48</sup> In 1985, the Commission reiterated this point, stating:

In the past, regulations under the Textile Act have paralleled the regulations issued by Customs . . . To the maximum extent consistent with the legislative intent, the Commission intends the final regulations for the disclosure of the

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<sup>47</sup> In that year, the pertinent section was 303.33(c). That text has remained unchanged. *See Federal Trade Commission: Part 303—Rules and Regulations Under the Textile Fiber Products Identification Act*, 24 FR 4480, 4485 (June 2, 1959).

<sup>48</sup> Like paragraph (d), paragraph (f) remains unchanged since 1959.

country of origin of imported textile . . . products . . . to be construed in a manner consistent with Customs regulations.<sup>49</sup>

Further, in 1998, to address an arguable inconsistency with certain Customs rulings implementing Section 334 of the Uruguay Round Agreements Act (“URAA”),<sup>50</sup> the Commission amended section 303.33 to add clarifying examples of country-of-origin disclosures.<sup>51</sup> In doing so, the Commission said that country-of-origin disclosures must comply with the requirements of both Commission and Customs laws and regulations.

Although the Commission has repeatedly noted its intent to ensure consistency between section 303.33 and the Customs laws, the trade laws and regulations applicable to textile fiber products have changed significantly. For example, in 1959, Customs regulations on marking imported products provided simply that the country of origin is the country where the product was first manufactured or substantially transformed.<sup>52</sup>

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<sup>49</sup> *Federal Trade Commission: Amendment to Rules and Regulations Under the Wool Products Labeling Act of 1939 and Textile Fiber Products Identification Act, Notice of Final Rulemaking*, 50 FR 15100 at 15101 (Apr. 15, 1985). This Notice compared the Customs regulations in 19 CFR 134 (1984) to 16 CFR 303.33 (1984).

<sup>50</sup> 19 U.S.C. 3592.

<sup>51</sup> *Federal Trade Commission: Rules and Regulations Under the Textile Fiber Products Identification Act, the Wool Products Labeling Act, and the Fur Products Labeling Act; Final Rule*, 63 FR 7508 at 7512-13 (Feb. 13, 1998). Specifically, the Commission explained that the URAA provides that the country of origin of certain categories of textiles (flat goods such as sheets, towels, comforters, handkerchiefs, scarves, and napkins) is the country where the fabric was created rather than the country where the fabric is used to manufacture the final product. As a result, identifying such products as having imported fabric, without identifying the fabric’s country of origin, would arguably comply with the Textile Rules but would not comply with the Customs laws. The Commission stated that Commission staff had met with Customs staff, as well as industry representatives, and that any apparent inconsistency had been resolved. The Commission further stated that a U.S. manufacturer can comply with both the Customs and Textile Rules requirements by identifying the country of origin of the imported fabric and the fact that the final product was made in the United States (e.g., “scarf made in USA of fabric made in China”). *Id.* at 7512.

<sup>52</sup> The regulation stated: “The country of production or manufacture shall be considered the country of origin. Further work or material added to an article in another country must affect a substantial transformation in

The Rules follow a nearly identical approach to determining the origin of imported products even though they do not use identical terminology. However, Customs no longer uses “substantial transformation” to determine the origin of many imported textile products. Rather, the Customs law now contains detailed rules for determining the country of origin of imported textile products.<sup>53</sup>

Therefore, the Commission agrees that it should update section 303.33(d) and (f) to better account for current Customs country-of-origin regulations and the fact that Customs is now part of the Department of Homeland Security rather than the Department of the Treasury. Accordingly, the Commission proposes to update and clarify section 303.33(d) to state that an imported product’s country of origin as determined under the laws and regulations enforced by Customs shall be the country where the product was processed or manufactured. The Commission also proposes to update section 303.33(f) by dropping the outdated reference to the Treasury Department and instead refer to any Tariff Act and the regulations promulgated thereunder. These amendments would revise the Rules to clearly reflect the Commission’s longstanding policy of ensuring the consistency of the Textile Rules and Customs regulations and address USA-ITA’s concerns.<sup>54</sup>

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order to render such other country the ‘country of origin’ within the meaning of this section.” 19 CFR 11.8(c)(1953).

<sup>53</sup> See, e.g., 19 U.S.C. 3592 and 19 CFR 102.21 and 102.22.

<sup>54</sup> The Commission also notes that, under some circumstances, the Act and the Rules require disclosures in addition to but not in conflict with those required by Customs. For example, if an imported product is partially manufactured in the United States, section 303.33(a)(4) requires the label to disclose the manufacturing processes that occurred in the foreign country and in the United States. This provision lists several examples of such disclosures, such as “Made in [foreign country], finished in USA.”

### C. E-Commerce and Textile Guaranties

The Rules already apply to and specifically address electronic commerce by, for example, defining the terms *mail order catalog* and *mail order promotional material* to include materials disseminated by electronic means.<sup>55</sup> Nonetheless, NRF urged the Commission to amend the Rules to more effectively address certain aspects of electronic commerce and to modify the provisions applicable to guaranties. To address these concerns, the Commission proposes amending the definition of the terms *invoice* and *invoice or other paper* in section 303.1(h) and the guaranty provisions in sections 303.36, 303.37, and 303.38.

#### 1. *Invoice or other paper*

NRF explained that businesses routinely send purchase orders, invoices, and related documents electronically, and that the product ordering and fulfillment process has become entirely electronic. Therefore, NRF recommended modifying the definition of *invoice or other paper* in section 303.1(h) to better address the increasing volume of electronic business, and ensure that those engaging in such business can comply fully with the Rules. Specifically, NRF recommended modifying the definition as follows (proposed changes in underline):

The terms *invoice* and *invoice or other paper* mean an account, order, memorandum, list, or catalog, which is issued to a purchaser, consignee, bailee, correspondent, agent, or any other person, in writing or in some other form capable of being read or interpreted electronically and preserved in a tangible or electronic form, in connection with the marketing or handling of any textile fiber product transported or delivered to such person.

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<sup>55</sup> 16 CFR 303.1(u).



The Commission finds this proposal problematic because the phrase “or interpreted electronically” is ambiguous. The proposal does not indicate to what extent an invoice or other document capable of electronic interpretation could be read and understood by an individual responsible for complying with the Textile Act and Rules or how the electronic interpretation of invoices squares with the affirmative responsibility of buyers and sellers to monitor and ensure that they comply with the Textile Rules.

The Commission notes, however, that further clarification that invoices and other paper can be preserved electronically may be warranted.<sup>56</sup> The Commission, therefore, proposes to amend section 303.1(h) to: (1) replace the word “paper” with the word “document”; (2) state explicitly that such documents can be issued electronically; and (3) acknowledge that ESIGN, 15 U.S.C. 7001 *et seq.*, allows for the preservation of records “in a form that is capable of being accurately reproduced for later reference, whether by transmission, printing, or otherwise.”<sup>57</sup> This amendment should address NRF’s concerns.<sup>58</sup>

## **2. E-Commerce and Separate Guaranties**

The Act provides that a business can avoid liability for selling a misbranded textile product if it received in good faith a guaranty that the product is not misbranded from a supplier

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<sup>56</sup> In 1998, the Commission modified the definition of *invoice or other paper* to clarify that such documents could be “in writing or in some other form capable of being read and preserved in a tangible form.” The Federal Register notice announcing the revision stated that the revision was meant “to recognize that these documents may now be generated and disseminated electronically.” 63 FR 7508 at 7514 (Feb. 13, 1998). The comments, however, show that further clarification may be warranted.

<sup>57</sup> 15 U.S.C. 7001(d)(1).

<sup>58</sup> Sections 303.21, 303.31, 303.36, 303.38, and 303.44 currently contain the phrase *invoice or other paper*. The Commission proposes to change the phrase to *invoice or other document* in each of these sections.

or agent residing in the United States.<sup>59</sup> NRF recommended adding the definition of *electronic agent* presently used in the Uniform Commercial Code<sup>60</sup> and using the term in section 303.36 (Form of separate guaranty) to allow businesses to accept guaranties using electronic agents.<sup>61</sup> The definition proposed by NRF for *electronic agent* specifically provides that the electronic acceptance of purchase orders would occur “with or without review or action by an individual.” NRF also urged the Commission to amend section 303.36 to allow numeric or alpha-numeric codes to satisfy existing name and address requirements for separate guaranties. The Commission declines to propose these amendments for the reasons explained below.

The Commission notes that the Rules do not prohibit or discourage the electronic communication of textile guaranties. The Rule provisions relating to guaranties are not dependent on the mode of their communication. Instead, the Rules focus on the substance of the guaranties. It is unclear how the use of an electronic agent, which by definition may exclude individuals, adequately ensures that buyers and sellers will monitor compliance with the Rules,

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<sup>59</sup> Section 7h(a) of the Textile Act provides: “No person shall be guilty of an unlawful act under section 70a of this title if he establishes a guaranty received in good faith, signed by and containing the name and address of the person residing in the United States by whom the textile fiber product guaranteed was manufactured or from whom it was received, that said product is not misbranded or falsely invoiced under the provisions of this subchapter.”

<sup>60</sup> NRF urged the Commission to add a definition of *electronic agent* to section 303.1 to account for the use of electronic communications in the ordering and fulfillment processes. NRF proposed the definition of *electronic agent* used in section 2-211 of the Uniform Commercial Code:

*Electronic agent* means a computer program or an electronic or other automated means used independently to initiate an action or respond to electronic records or performances in whole or in part, with or without review or action by an individual.

<sup>61</sup> Specifically, NRF recommended amending section 303.36 to describe an electronic guaranty process in which an individual or electronic agent places an order with a guarantor via transmission of an electronic purchase order that requests goods subject to specific terms and conditions including compliance with the Textile Fiber Products Identification Act and its regulations. An individual or electronic agent acting on behalf of the guarantor would confirm that the guarantor will fulfill the items and submits electronic confirmation of the same, and the guarantor would fulfill the order that is then accepted by the purchaser.

or how a buyer using an electronic agent can receive a guaranty in good faith so that it can rely on the guaranty.

NRF also recommended allowing numeric or alpha-numeric codes to satisfy existing name and address requirements presently in section 303.36.<sup>62</sup> This is not necessary because section 303.36 does not require written signatures on separate guaranties and specifically provides that the printed name and address will suffice to meet the signature and address requirements. In addition, nothing in section 303.36 prohibits electronic signatures. Comments have not presented any evidence showing that these alternatives are insufficient, impose significant costs on businesses, or that making the proposed change would decrease costs on businesses. Thus, this provision of the Rules appears to provide sufficient flexibility for compliance and the Commission does not see any reason to revise it. The Commission, seeks comment on these issues.

### **3. Prescribed Forms for Continuing Guaranties**

Section 303.37 provides a prescribed form of a continuing guaranty a seller provides to a buyer and section 303.38 provides a prescribed form for a continuing guaranty a seller files with the Commission. Both require the entity providing a textile guaranty to sign the guaranty under penalty of perjury. NRF recommended making the guaranty form in section 303.37 optional and eliminating the requirement that the entity providing the guaranty sign under penalty of perjury. The Commission declines to propose the first amendment, but proposes to require that guarantors certify guaranties rather than sign them under penalty of perjury.

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<sup>62</sup> In connection with this recommendation, NRF also recommended that the Commission amend the “Note” in section 303.36(a)(2) to allow the use of identifiers commonly used throughout the retailing industry in place of signatures and to expressly recognize that electronic signatures are permitted.

First, NRF recommended making the form of continuing guaranty from seller to buyer in section 303.37 optional to allow businesses to adapt the form to electronic processes without the obligation to revert to paper documents and signatures. However, NRF did not present any evidence showing that the prescribed form is not adaptable to electronic communications, including electronic signatures. The prescribed form may be sent electronically, and there is no provision in the Textile Rules requiring written signatures as opposed to electronic signatures, as sanctioned by ESIGN.<sup>63</sup> The Commission therefore declines to make the prescribed form optional. The Commission notes that the form is brief and consists only of a two sentence certification and a signature block stating the date, location, and name of the business making the guaranty, as well as the name, title, and signature of the person signing the guaranty under penalty of perjury.

Second, NRF recommended that the Commission eliminate the penalty of perjury language for continuing guaranties. It argued that such a requirement inappropriately introduces the criminal elements of perjury into private contracts and that the person providing the attestation cannot attest to the truth of labels and invoices in the future.

Although swearing under penalty of perjury in private agreements is not unusual,<sup>64</sup> the Commission notes that swearing to future events is problematic and may present enforcement issues. In addition, the Commission recognizes that many people who intend to comply with the

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<sup>63</sup> The word “signature” appears in section 303.36 and 303.37, and in the prescribed form for continuing guaranties filed with the Commission that appears as part of section 303.38. None of these provisions require written signatures or prohibit electronic signatures.

<sup>64</sup> See *J. Geils Band Employee Benefit Plan v. Smith Barney Shearson, Inc.*, 76 F.3d 1245 (1st Cir. 1996)(Court upheld summary judgment in part because appellant failed to rebut acknowledgment of receipt of investment prospectuses evidenced by an agreement executed under penalty of perjury).

Rules may be understandably reluctant to swear to a future event, and continuing guaranties address future shipments. Accordingly, the Commission proposes amending section 303.37 to eliminate the penalty-of-perjury language.

However, continuing guaranties must provide sufficient indicia of reliability to permit buyers to rely on them on an ongoing basis. The perjury language was included to address this concern. Therefore, instead of requiring guarantors to swear under penalty of perjury, the Commission proposes requiring them to acknowledge that providing a false guaranty is unlawful, and to certify that they will actively monitor and ensure compliance with the Textile Act and Rules. This requirement should focus guarantors' attention on, and underscore, their obligation to comply, thereby increasing a guaranty's reliability. However, it would not impose additional burdens on guarantors because they would simply be acknowledging the Textile Act's prohibition against false guaranties<sup>65</sup> and certifying to the monitoring that they already must engage in to ensure that they do not provide false guaranties. In addition, the required statements would benefit recipients of guaranties by bolstering the basis of their good-faith reliance on the guaranties. Finally, the acknowledgement and certification may facilitate enforcement action against those who provide false guaranties.

To further ensure the reliability of continuing guaranties, the Commission also proposes requiring them to be renewed annually. Annual renewal should encourage guarantors to take regular steps to ensure that they remain in compliance with the Act and Rules over time and thereby increase the guaranties' reliability. This requirement would not likely impose significant costs because it involves the sending of a relatively simple one-page form including information very similar, if not identical, to that provided on the guarantor's last continuing guaranty form.

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<sup>65</sup> The Textile Act provides that furnishing a false guaranty "is unlawful, and shall be an unfair method of competition, and an unfair and deceptive act or practice" under the FTC Act. 15 U.S.C. 70h(b).

Accordingly, the Commission proposes amending section 303.37, relating to the requirements for continuing guaranties from sellers to buyers, to provide that the guarantor must: (1) guaranty that all textile fiber products now being sold or which may hereafter be sold or delivered to the buyer are not, and will not be, misbranded nor falsely nor deceptively advertised or invoiced; (2) acknowledge that furnishing a false guaranty is an unlawful unfair and deceptive act or practice pursuant to the Federal Trade Commission Act; and (3) certify that it will actively monitor and ensure compliance with the Textile Act and Rules during the duration of the guaranty. The proposed amendment would also remove the requirement that guarantors sign under penalty of perjury and provide that guaranties are effective for one year instead of being effective until revoked.

The Commission also proposes to revise FTC Form 31-A set forth in section 303.38 so that it is consistent with the guaranty provisions as amended. Because this form is also used to provide guaranties under the Fur and Wool Acts and references these Acts,<sup>66</sup> and there is no reason to treat Fur and Wool guaranties differently than Textile guaranties, the Commission proposes to revise the form's references to Fur and Wool guaranties in the same way.<sup>67</sup>

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<sup>66</sup> Section 301.48(a)(3) of the Fur Rules and section 300.33(b) of the Wool Rules provide that the prescribed form for continuing guaranties filed with the Commission is found in section 303.38(b) of the Textile Rules. *See also* Wool Products Labeling Act of 1939, 15 U.S.C. 68 *et seq.* and the Fur Products Labeling Act, 15 U.S.C. 69 *et seq.*

<sup>67</sup> The comment that favored making the section 303.37 guaranty form optional did not ask the Commission to make use of form 31-A optional. Therefore, the Commission does not have any reason to believe that submitting continuing guaranties to the Commission using the form imposes unreasonable costs. Moreover, the form facilitates efficient processing of the continuing guaranties submitted to the Commission because it enables Commission staff to quickly identify missing information and advise submitters.

#### **4. Alternative to Textile Act Guaranty**

The Textile Act, 15 U.S.C. 70h, authorizes textile guaranties from persons “residing in the United States by whom the textile fiber product guaranteed was manufactured or from whom it was received.”<sup>68</sup> Thus, businesses that buy from manufacturers or suppliers that have no representative residing in the United States cannot obtain a guaranty.

USA-ITA estimated that more than 90 percent of apparel products are imported. Although USA-ITA stated that it did not have a reliable estimate of the percentage imported directly by retailers, it asserted that the increase in imports makes it difficult for businesses that buy from manufacturers or suppliers that do not have a U.S. representative to obtain a guaranty.

Because many retailers now regularly rely on global supply chains, NRF recommended that the Commission adopt an alternative guaranty for such businesses. Specifically, NRF recommended that the Commission allow such businesses to rely on compliance representations from foreign manufacturers or suppliers when: (1) the businesses do not embellish or misrepresent the representations; (2) the textile products are not sold as private label products; and (3) the businesses have no reason to know that the marketing or sale of the products would violate the Act or Rules.

These comments have merit. Changes in the textile industry resulting in increased imports mean that more and more businesses cannot obtain guaranties. Based on its enforcement experience, the Commission finds it in the public interest to provide protections for retailers that: (1) cannot legally obtain a guaranty under the Act; (2) do not embellish or misrepresent claims

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<sup>68</sup> 15 U.S.C. 70h provides that a person relying on a guaranty, received in good faith, that a product is not misbranded or falsely invoiced from a guarantor residing in the United States will not be liable under the Act..

provided by the manufacturer related to the Act or Rules; and (3) do not market the products as private label products; unless the retailers knew or should have known that the marketing or sale of the products would violate the Act or Rules. Such protections provide greater consistency for retailers regardless of whether they directly import products or use third-party domestic importers. Accordingly, on January 3, 2013, the Commission announced an enforcement policy statement providing that it will not bring enforcement actions against retailers that meet the above criteria.<sup>69</sup> This statement addresses the concerns raised by NRF.

#### **D. Coverage and Exemptions From the Act and Rules**

Section 303.45 (Exclusions from the Act) has been the source of some confusion. The provision is phrased in terms of textile products excluded from operation of the Textile Act. However, instead of listing the excluded products, the provision lists 23 textile product categories that are not excluded. It then identifies the excluded product categories.

To address this issue without changing the substance of this section, the Commission proposes amending the section so that paragraph (a) identifies the textile fiber product categories subject to the Act and regulations, unless excluded from the Act's requirements in paragraph (b). New paragraph (b) provides that all textile fiber products other than those identified in paragraph (a) are excluded, as well as the exempted products identified in paragraph (b). The Commission also proposes revising current paragraphs (b) and (c) to reflect the above change and redesignating them as paragraphs (c) and (d), respectively.

#### **V. Other Amendments the Commission Declines to Propose**

Several comments urged the Commission to address the disclosure of a business's identity, the provisions implementing the RN program, and disclosures in multiple languages.

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<sup>69</sup> See *Enforcement Policy Regarding Certain Imported Textile, Wool, and Fur Products* at <http://www.ftc.gov/opa/2013/01/eps.shtml>.



The Commission declines these requests either because the record does not include sufficient evidence to support them or the Commission lacks the authority to adopt them.

**A. Proposals to Provide Additional Options for Identifying Businesses in Required Disclosures and To Modify the RN Program**

Several comments supported allowing businesses to use Canadian registered numbers as an alternative to U.S. registered numbers.<sup>70</sup> AAFA stated that the use of identifying numbers approved by other countries would reduce costs, advance harmonization, and facilitate trade. NRF stated that recognizing the use of both Canadian CA numbers and U.S. RN numbers would support the free flow of products between the U.S. and Canada and reduce compliance costs for many U.S. retailers. USA-ITA stated that allowing alternative identifiers would make it easier to develop a label that meets the requirements of multiple jurisdictions.<sup>71</sup>

These proposals appear to have merit; however, the Textile Act provides only for the use of identifying numbers issued by the Commission.<sup>72</sup> Thus, the Commission lacks the authority to amend the Rules to allow businesses to identify themselves on labels using numbers issued by other nations. In addition, the comments favoring this amendment did not provide any evidence on the costs and benefits of the proposal.<sup>73</sup>

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<sup>70</sup> AAFA (17), CAF (19), NRF (20), USA-ITA (14).

<sup>71</sup> Prior to issuing this NPRM, the Commission's staff provided guidance stating that a business located outside the United States can comply with the business name label disclosure requirement by disclosing the business name of the textile product manufacturer or the RN or business name of a company in the United States that is directly involved with importing, distributing, or selling the product. For clarity purposes, the Commission notes here that a business located outside the United States that engages in commerce subject to the Act (*e.g.*, such as an exporter engaged in the sale, offering for sale, advertising, delivery, or transportation of a covered textile product in the United States) may also comply with this requirement by disclosing its own business name on the label. *See* 15 U.S.C. 70a and 70b(b)(3) and 16 CFR 303.16.

<sup>72</sup> 15 U.S.C. 70b(b)(3). *See* section 303.20 of the Rules.

<sup>73</sup> The Commission considered the possibility of amending the Rules to allow applicants to request specific numbers from the Commission, which would enable an applicant with a number issued by another nation to request

Two comments addressed the deceptive use of RN numbers. Specifically, Karen Lunde and Classical Silk, Inc., noted that there is no penalty when someone uses another company's RN number. Lunde recommended that the Commission amend the Rules to impose legal consequences, such as monetary fines, on companies that deceptively use RN numbers, and that the Commission take enforcement action against violators. Lunde also suggested that the Textile Rules hold retailers and wholesalers responsible for checking and verifying that RN numbers are accurate and not stolen, and allow companies to which RN numbers are issued to recover all costs in defending themselves against companies that fraudulently use RN numbers.

These comments also recommended changes to prevent the deceptive use of RN numbers. Lunde recommended requiring a signature under penalty of perjury on applications to obtain or renew numbers. Both Lunde and Classical Silk recommended that the Commission require the renewal of RN numbers every few years, in part to ensure that company addresses are regularly updated. Lunde recommended that the FTC make available a database to allow companies to check and verify that RN numbers are correct and actually are from the suppliers of the garments. Classical Silk recommended that the Commission make the date of application; the name of the person submitting and certifying the application; the title of that person; that person's email address; and the website URL address available to the public.

The Commission declines to propose these amendments because the Commission lacks the authority to adopt them, the record does not support them, or they are unnecessary. Section 303.20(b)(1) already provides that "Registered identification numbers shall be used only by the

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that the Commission issue an identical number (assuming the Commission had not already issued the number to a different firm). This approach might address some of the concerns raised by the comments; however, it would also pose a significant risk of confusion to the extent that it resulted in the Commission issuing numbers that other nations or agencies had already issued to different firms. To avoid such confusion, the Commission would have to confirm that no other nation had issued the requested number to a different firm before issuing it to the applicant. Doing so would likely impose significant costs on the Commission. None of the comments suggested this approach and there is no evidence in the record supporting it.

person or concern to whom they are issued, and such numbers are not transferable or assignable.” The Commission has the authority to enforce this provision by seeking injunctive or other equitable relief from violators.<sup>74</sup> The Commission, however, does not have the authority under the Textile Act or the FTC Act to seek civil penalties from those who violate this provision, or to authorize businesses with RN numbers to recover all costs in defending themselves against those who use their RN numbers fraudulently.

Although the Commission has the authority to implement some of the other proposals, and they potentially could reduce the misuse of RN numbers, Lunde and Classical Silk did not provide information showing that there is a widespread problem with the unauthorized use of RN numbers or evidence on the costs and benefits of the changes to the RN program they advocated. Some of the changes, such as requiring retailers and wholesalers to check and verify RN numbers and creating or expanding RN databases, would likely increase industry compliance costs or the Commission’s cost of administering the program. Others, such as identifying the person submitting an RN application and providing his or her email address, would involve disclosing information about RN applicants that the applicants may have legitimate privacy concerns about disclosing. Furthermore, it is not clear whether these changes would have any significant impact on the misuse of RN numbers identified by the two commenters. Accordingly, the Commission declines these proposals at this time.

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<sup>74</sup> See 15 U.S.C. 45 and 53(b).

## **B. The Use of Multiple Languages in Required Disclosures**

The Textile Rules already allow multiple language disclosures.<sup>75</sup> The comments stated that allowing disclosures in multiple languages benefits consumers, including American consumers for whom English is not their first language.<sup>76</sup> AAFA and McNeese stated that multiple language labels are not confusing to U.S. consumers. The comments also stated that allowing disclosures in multiple languages benefits businesses.<sup>77</sup> AAFA noted that its members source and distribute products around the globe, and that it is therefore important to make the information on labels accessible for consumers in multiple markets. CAF noted that textile labels in multiple languages allow the textile industry to “rationalize” production and produce garments with a single labeling scheme appropriate for multiple markets. USA-ITA noted that multilingual labels create efficiencies and lower costs for those who market textile products in multiple national markets. McNeese stated that multiple language labels reduce costs for U.S. and EU textile manufacturers, and are consistent with regulatory cooperation efforts between the U.S. and the EU.

The ANPR asked whether the Commission should “consider consumer education or other measures to help non-English-speaking consumers obtain the information that must be disclosed under the Textile Act and Rules.”<sup>78</sup> Bureau Veritas stated that fiber content labels in multiple

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<sup>75</sup> Six comments addressed this issue: AAFA (17), Bureau Veritas (9), CAF (19), C&R (6), McNeese (4), and USA-ITA (14). C&R(6) urged the Commission to clarify whether inclusion of multiple languages is permitted, which the Commission reiterates here. Some of the comments incorrectly interpreted the Commission’s request for comments relating to the use of multiple languages on labels as a proposal to prohibit the practice.

<sup>76</sup> AAFA (17) and CAF (19).

<sup>77</sup> AAFA (17), CAF (19), McNeese (4), and USA-ITA (14).

<sup>78</sup> See ANPR question 20(a). Question 16 asked: “Should the Commission modify Section 303.16(c) or consider any additional measures regarding non-required information such as the voluntary use of multilingual labels?”

languages can be confusing and/or difficult to read, and recommended that the Commission prescribe acceptable format(s) to avoid confusion.<sup>79</sup> Bureau Veritas suggested two formats, one that groups required disclosures by language (*e.g.*, English disclosures together, French disclosures together), and another that combines different languages for the required disclosures (*e.g.*, \_\_\_% generic fiber name in English/other language). The Commission declines to propose amending the Rules to specify particular formats for making disclosures in multiple languages. The record does not include any evidence regarding how consumers interpret labels in multiple languages, whether current disclosures using multiple languages confuse consumers, or whether any particular format for using multiple languages is superior to others. In addition, none of the comments proposed other measures to help non-English speaking consumers obtain the information disclosed pursuant to the Act and Rules. The Commission may provide additional guidance on using multiple languages in its business education materials if it obtains information enabling it to do so.<sup>80</sup>

## **VI. REQUEST FOR COMMENTS**

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before July 8, 2013. Write “Textile Rules, 16 CFR Part 303, Project No. P948404” on your comment. Your comment – including your name and your state – will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Website, at <http://www.ftc.gov/os/publiccomments.shtml>. As a matter of

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<sup>79</sup> C&R (6) was uncertain whether multiple language disclosures were permitted and, if so, how to make such disclosures, but did not propose any particular format.

<sup>80</sup> Several comments urged the Commission to clarify its business education materials and to provide examples of preferred disclosure formats in advertising, including Internet advertising, and to make them available in both PDF and HTML formats. The Commission plans to do so.

discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Website.

Because your comment will be made public, you are solely responsible for making sure that your comment doesn't include any sensitive personal information, such as anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, do not include any "[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential," as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).<sup>81</sup> Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at

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<sup>81</sup> In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. See FTC Rule 4.9(c), 16 CFR 4.9(c).

<https://ftcpublic.commentworks.com/ftc/textilerulesnprm>, by following the instruction on the web-based form. If this Notice appears at <http://www.regulations.gov/#!home>, you also may file a comment through that website.

If you file your comment on paper, write “Textile Rules, 16 CFR Part 303, Project No. P948404” on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H-113 (Annex G), 600 Pennsylvania Avenue, NW, Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Website at <http://www.ftc.gov> to read this NPRM and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before July 8, 2013. You can find more information, including routine uses permitted by the Privacy Act, in the Commission’s privacy policy, at <http://www.ftc.gov/ftc/privacy.htm>.

The Commission invites members of the public to comment on any issues or concerns they believe are relevant or appropriate to the Commission's consideration of proposed amendments to the Textile Rules. The Commission requests that comments provide factual data upon which they are based. In addition to the issues raised above, the Commission solicits public comment on the costs and benefits to industry members and consumers of each of the proposals as well as the specific questions identified below. These questions are designed to assist the public and should not be construed as a limitation on the issues on which public comment may be submitted.

## Questions

1. General Questions on Amendments: To maximize the benefits and minimize the costs for buyers and sellers (including small businesses), the Commission seeks views and data on the following general questions for each of the proposed changes described in this NPRM:

(A) What benefits would a proposed change confer and on whom? The Commission in particular seeks information on any benefits a change would confer on consumers of textile fiber products.

(B) What costs or burdens would a proposed change impose and on whom? The Commission in particular seeks information on any burdens a change would impose on small businesses.

(C) What regulatory alternatives to the proposed changes are available that would reduce the burdens of the proposed changes while providing the same benefits?

(D) What evidence supports your answers?

2. Hang-tags and Fiber Content Disclosures:

(A) Would the proposed amendment to section 303.17 allowing hang-tags without full fiber content disclosures under certain circumstances affect the extent to which consumers become informed about the full fiber content of textile fiber products? If so, how?

(B) Would the proposed disclosure requirements for hang-tags not disclosing full fiber content (*i.e.*, “This tag does not disclose the product’s full fiber content” or “See other label for the product’s full fiber content”) prevent deception or confusion regarding fiber content? If so, how? Should the Commission provide different or additional examples of the required hang-tag disclosures? If so, what?

(C) What evidence supports your answers?



### 3. Electronic Signatures and Guaranties:

(A) Do the Textile Rules and the proposed changes to the guaranty provisions in sections 303.36, 303.37, and 303.38 provide sufficient flexibility for compliance using electronic transmittal of guaranties? If so, why and how? If not, why not?

(B) Should the Commission revise the proposed certification requirement for continuing guaranties provided by suppliers pursuant to sections 303.37 and 303.38? If so, why and how? If not, why not?

(C) Should the Rules require those providing a continuing guaranty pursuant to sections 303.37 and 303.38 to renew the certification annually or at some other interval? If so, why? If not, why not? To what extent would requiring guarantors to renew certifications annually increase costs?

(D) What evidence supports your answers?

## **VII. COMMUNICATIONS TO COMMISSIONERS AND COMMISSIONER ADVISORS BY OUTSIDE PARTIES**

Written communications and summaries or transcripts of oral communications respecting the merits of this proceeding from any outside party to any Commissioner or Commissioner's advisor will be placed on the public record.<sup>82</sup>

## **VIII. REGULATORY FLEXIBILITY ACT REQUIREMENTS**

The Regulatory Flexibility Act ("RFA")<sup>83</sup> requires that the Commission conduct an analysis of the anticipated economic impact of the proposed amendments on small entities. The purpose of a regulatory flexibility analysis is to ensure that an agency considers the impacts on

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<sup>82</sup> See 16 CFR 1.26(b)(5).

<sup>83</sup> 5 U.S.C. 601-612.

small entities and examines regulatory alternatives that could achieve the regulatory purpose while minimizing burdens on small entities. Section 605 of the RFA<sup>84</sup> provides that such an analysis is not required if the agency head certifies that the regulatory action will not have a significant economic impact on a substantial number of small entities.

The Commission believes that the proposed amendments would not have a significant economic impact upon small entities, although it may affect a substantial number of small businesses. The proposed amendments: (a) clarify the Rules, including sections 303.1(h),<sup>85</sup> 303.12(a), 303.33(d) and (f), 303.35, 303.41(a), 303.42(a), and 303.45; (b) amend section 303.7 to incorporate the updated version of ISO 2076, thereby establishing the generic names for the manufactured fibers set forth in the current ISO standard; (c) amend section 303.17(b) to allow manufacturers and importers to disclose fiber names and trademarks and information about fiber performance on certain hang-tags affixed to textile fiber products without including the product's full fiber content information on the hang-tag; and (d) amend sections 303.36, 303.37, and 303.38 to clarify and update the Rules' guaranty provisions by, among other things, replacing the requirement that suppliers that provide a guaranty sign under penalty of perjury with a certification requirement for continuing guaranties that must be renewed every year.

In the Commission's view, the proposed amendments should not have a significant or disproportionate impact on the costs of small entities that manufacture or import textile fiber products. Therefore, based on available information, the Commission certifies that amending the

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<sup>84</sup> 5 U.S.C. 605.

<sup>85</sup> This amendment would also require parallel revisions to sections 303.21, 303.31, 303.36, 303.38, and 303.44.

Rules as proposed will not have a significant economic impact on a substantial number of small businesses.

Although the Commission certifies under the RFA that the proposed amendments would not, if promulgated, have a significant impact on a substantial number of small entities, the Commission has determined, nonetheless, that it is appropriate to publish an Initial Regulatory Flexibility Analysis to inquire into the impact of the proposed amendments on small entities. Therefore, the Commission has prepared the following analysis:

**A. Description of the Reasons That Action by the Agency Is Being Taken**

In response to public comments, the Commission proposes amending the Rules to respond to changed commercial practices and updated industry standards.

**B. Statement of the Objectives of, and Legal Basis for, the Proposed Amendments**

The objective of the proposed amendments is to clarify the Rules; incorporate the updated version of ISO 2076, thereby establishing the generic names for the manufactured fibers set forth in the current ISO standard; allow manufacturers and importers to disclose fiber names and trademarks and information about fiber performance on certain hang-tags affixed to textile fiber products without including the product's full fiber content information on the hang-tag; and clarify and update the Rules' guaranty provisions by, among other things, replacing the requirement that suppliers that provide a guaranty sign under penalty of perjury with a certification requirement that must be renewed every year. The Textile Act authorizes the Commission to implement its requirements through the issuance of rules.

The proposed amendments would clarify and update the Rules, and provide covered entities with additional labeling options without imposing significant new burdens or additional costs. For example, businesses that prefer not to affix a hang-tag disclosing a fiber trademark

without disclosing the product's full fiber content need not do so. The proposal that continuing guaranty certifications expire after one year would likely impose minimal additional costs on businesses that choose to provide a guaranty. Providing a new continuing guaranty each year would likely entail minimal costs, especially if the business provides the guaranty electronically or as part of a paper invoice that it would have sent to the buyer in any event. In addition, the new guaranty would consist of a relatively simple one-page form including information very similar, if not identical, to that provided on the guarantor's last continuing guaranty form.

### **C. Small Entities to Which the Proposed Amendments Will Apply**

The Rules apply to various segments of the textile fiber product industry, including manufacturers and wholesalers of textile apparel products. Under the Small Business Size Standards issued by the Small Business Administration, textile apparel manufacturers qualify as small businesses if they have 500 or fewer employees. Clothing wholesalers qualify as small businesses if they have 100 or fewer employees. The Commission's staff has estimated that approximately 22,218 textile fiber product manufacturers and importers are covered by the Rules' disclosure requirements.<sup>86</sup> A substantial number of these entities likely qualify as small businesses. The Commission estimates that the proposed amendments will not have a significant impact on small businesses because they do not impose any significant new obligations on them. The Commission seeks comment and information with regard to the estimated number or nature of small business entities for which the proposed amendments would have a significant impact.

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<sup>86</sup> *Federal Trade Commission: Agency Information Collection Activities; Proposed Collection; Comment Request*, 76 FR 77230 (Dec. 12, 2011).

**D. Projected Reporting, Recordkeeping, and Other Compliance Requirements, Including Classes of Covered Small Entities and Professional Skills Needed to Comply**

As explained earlier in this document, the proposed amendments clarify the Rules; incorporate the updated version of ISO 2076, thereby establishing the generic names for the manufactured fibers set forth in the current ISO standard; allow manufacturers and importers to disclose fiber names and trademarks and information about fiber performance on certain hang-tags affixed to textile fiber products without including the product's full fiber content information on the hang-tag; and clarify and update the Rules' guaranty provisions by, among other things, replacing the requirement that suppliers that provide a guaranty sign under penalty of perjury with a certification requirement that must be renewed every year. The small entities potentially covered by these proposed amendments will include all such entities subject to the Rules. The professional skills necessary for compliance with the Rules as modified by the proposed amendments would include office and administrative support supervisors to determine label content and clerical personnel to draft and obtain labels and keep records. The Commission invites comment and information on these issues.

**E. Duplicative, Overlapping, or Conflicting Federal Rules**

The Commission has not identified any other federal statutes, rules, or policies that would duplicate, overlap, or conflict with the proposed amendments. The Commission invites comment and information on this issue.

**F. Significant Alternatives to the Proposed Amendments**

The Commission has not proposed any specific small entity exemption or other significant alternatives, as the proposed amendments simply clarify the Rules; incorporate the updated version of ISO 2076, thereby establishing the generic names for the manufactured fibers

set forth in the current ISO standard; allow manufacturers and importers to disclose fiber names and trademarks and information about fiber performance on certain hang-tags affixed to textile fiber products without including the product's full fiber content information on the hang-tag; and clarify and update the Rules' guaranty provisions by, among other things, replacing the requirement that suppliers that provide a guaranty sign under penalty of perjury with a certification requirement that must be renewed every year. Under these limited circumstances, the Commission does not believe a special exemption for small entities or significant compliance alternatives are necessary or appropriate to minimize the compliance burden, if any, on small entities while achieving the intended purposes of the proposed amendments. Nonetheless, the Commission seeks comment and information on the need, if any, for alternative compliance methods that would reduce the economic impact of the Rules on small entities. If the comments filed in response to this NPRM identify small entities that would be affected by the proposed amendments, as well as alternative methods of compliance that would reduce the economic impact of the proposed amendments on such entities, the Commission will consider the feasibility of such alternatives and determine whether they should be incorporated into the final Rules.

## **IX. PAPERWORK REDUCTION ACT**

The Rules contain various "collection of information" (*e.g.*, disclosure and recordkeeping) requirements for which the Commission has obtained OMB clearance under the Paperwork Reduction Act ("PRA").<sup>87</sup> As discussed above, the Commission proposes: (a)

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<sup>87</sup> 44 U.S.C. 3501 *et seq.* The Commission recently published its PRA burden estimates for the current information collection requirements under the Rules. See *Federal Trade Commission: Agency Information Collection Activities; Proposed Collection; Comment Request*, 76 FR 77230 (Dec. 12, 2011) and *Federal Trade Commission: Agency Information Collection Activities; Submission for OMB Review; Comment Request*, 77 FR

clarifying the Rules, including sections 303.1(h),<sup>88</sup> 303.12(a), 303.33(d) and (f), 303.35, 303.41(a), 303.42(a), and 303.45; (b) amending section 303.7 to incorporate the updated version of ISO 2076, thereby establishing the generic names for the manufactured fibers set forth in the current ISO standard; (c) amending section 303.17(b) to allow manufacturers and importers to disclose fiber names and trademarks and information about fiber performance on certain hang-tags affixed to textile fiber products without including the product's full fiber content information on the hang-tag; and (d) amending sections 303.36, 303.37, and 303.38 to clarify and update the Rules' guaranty provisions by, among other things, replacing the requirement that suppliers provide a guaranty signed under penalty of perjury with a certification requirement for continuing guaranties that must be renewed every year.

These proposed amendments do not impose any additional significant collection of information requirements. Businesses that prefer not to affix a hang-tag disclosing a fiber name or trademark without disclosing the product's full fiber content need not do so. The proposal that continuing guaranty certifications expire after one year would likely impose minimal additional costs on businesses that choose to provide a guaranty. Providing a new continuing guaranty each year would likely entail minimal costs, especially if the business provides the guaranty electronically or as part of a paper invoice that it would have sent to the buyer in any event.

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10744 (Feb. 23, 2012). On March 26, 2012, OMB granted clearance through March 31, 2015, for these requirements and the associated PRA burden estimates. The OMB control number is 3084-0101.

<sup>88</sup> This amendment would also require parallel revisions to sections 303.21, 303.31, 303.36, 303.38, and 303.44.

## **X. PROPOSED RULE LANGUAGE**

### **List of Subjects in 16 CFR Part 303**

Advertising, Labeling, Recordkeeping, Textile fiber products.

## **PART 303—RULES AND REGULATIONS UNDER THE TEXTILE FIBER PRODUCTS IDENTIFICATION ACT**

1. The authority citation for part 303 continues to read as follows:

**Authority:** 15 U.S.C. 70 et seq.

2. Amend § 303.1 by revising paragraph (h) to read as follows:

### **§ 303.1 Terms defined.**

\* \* \* \* \*

(h) The terms *invoice* and *invoice or other document* mean an account, order, memorandum, list, or catalog, which is issued to a purchaser, consignee, bailee, correspondent, agent, or any other person, electronically, in writing, or in some other form capable of being read and preserved in a form that is capable of being accurately reproduced for later reference, whether by transmission, printing, or otherwise, in connection with the marketing or handling of any textile fiber product transported or delivered to such person.

\* \* \* \* \*

3. Amend § 303.7 by revising the introductory text to read as follows:

### **§ 303.7 Generic names and definitions for manufactured fibers.**

Pursuant to the provisions of section 7(c) of the Act, the Commission hereby establishes the generic names for manufactured fibers, together with their



respective definitions, set forth in this section, and the generic names for manufactured fibers, together with their respective definitions, set forth in International Organization for Standardization ISO 2076:2010(E), “Textiles—Man-made fibres—Generic names.” This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the American National Standards Institute, 11 West 42nd St., 13th floor, New York, NY 10036. Copies may be inspected at the Federal Trade Commission, Room 130, 600 Pennsylvania Avenue, NW., Washington, DC 20580, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to:

<http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

\* \* \* \* \*

4. Amend § 303.12 by revising paragraph (a) to read as follows:

**§ 303.12 Trimmings of household textile articles.**

(a) Pursuant to section 12 of the Act, trimmings incorporated in articles of wearing apparel and other household textile articles are exempt from the Act and regulations, except for decorative trim, decorative patterns and designs, and elastic materials in findings exceeding the surface area thresholds described and in paragraph (b) of this section. Trimmings may, among other forms of trim, include:

(1) Rickrack, tape, belting, binding, braid, labels (either required or non-required), collars, cuffs, wrist bands, leg bands, waist bands, gussets, gores, welts, and

findings, including superimposed garters in hosiery, and elastic materials and threads inserted in or added to the basic product or garment in minor proportion for holding, reinforcing or similar structural purposes;

(2) Decorative trim, whether applied by embroidery, overlay, applique, or attachment; and

(3) Decorative patterns or designs which are an integral part of the fabric out of which the household textile article is made. *Provided*, That such decorative trim or decorative pattern or design, as specified in paragraphs (a)(2) and (3) of this section, does not exceed 15 percent of the surface area of the household textile article. If no representation is made as to the fiber content of the decorative trim or decoration, as provided for in paragraphs (a)(2) and (3) of this section, and the fiber content of the decorative trim or decoration differs from the fiber content designation of the basic fabric, the fiber content designation of the basic fabric shall be followed by the statement “exclusive of decoration.”

\* \* \* \* \*

5. Revise § 303.17(b) to read as follows:

**§ 303.17 Use of fiber trademarks and generic names on labels.**

\* \* \* \* \*

(b) Where a generic name or a fiber trademark is used on any label providing required information, a full fiber content disclosure shall be made in accordance with the Act and regulations the first time the generic name or fiber trademark appears on the label. Where a fiber generic name or trademark is used on any hang-tag attached to a textile fiber product that has a label providing required

information and the hang-tag provides non-required information, such as a hang-tag stating only a fiber generic name or trademark or providing information about a particular fiber's characteristics, the hang-tag need not provide a full fiber content disclosure; however, if the textile fiber product contains any fiber other than the fiber identified by the fiber generic name or trademark, the hang-tag must disclose clearly and conspicuously that it does not provide the product's full fiber content; for example:

“This tag does not disclose the product's full fiber content.”

or

“See label for the product's full fiber content.”

\* \* \* \* \*

6. Amend § 303.21 by revising paragraphs (a)(3) and (b) to read as follows:

**§ 303.21 Marking of samples, swatches, or specimens and products sold therefrom.**

(a) \* \* \*

(3) If such samples, swatches, or specimens are not used to effect sales to ultimate consumers and are not in the form intended for sale or delivery to, or for use by, the ultimate consumer, and are accompanied by an invoice or other document showing the required information.

(b) Where properly labeled samples, swatches, or specimens are used to effect the sale of articles of wearing apparel or other household textile articles which are manufactured

specifically for a particular customer after the sale is consummated, the articles of wearing apparel or other household textile articles need not be labeled if they are of the same fiber content as the samples, swatches, or specimens from which the sale was effected and an invoice or other document accompanies them showing the information otherwise required to appear on the label.

\* \* \* \* \*

7. Revise § 303.31 to read as follows:

**§ 303.31 Invoice in lieu of label.**

Where a textile fiber product is not in the form intended for sale, delivery to, or for use by the ultimate consumer, an invoice or other document may be used in lieu of a label, and such invoice or other document shall show, in addition to the name and address of the person issuing the invoice or other document, the fiber content of such product as provided in the Act and regulations as well as any other required information.

8. Amend § 303.33, by revising paragraphs (d) and (f) to read as follows:

**§ 303.33 Country where textile fiber products are processed or manufactured.**

\* \* \* \* \*

(d) The country of origin of an imported textile fiber product as determined under the laws and regulations enforced by United States Customs and Border Protection shall be considered to be the country where such textile fiber product was processed or manufactured.

\* \* \* \* \*

(f) Nothing in this rule shall be construed as limiting in any way the information required to be disclosed on labels under the provisions of any Tariff Act of the United States or regulations promulgated thereunder.

9. Revise § 303.35 to read as follows:

### **§ 303.35 Use of terms “virgin” or “new.”**

The terms *virgin* or *new* as descriptive of a textile fiber product, or any fiber or part thereof, shall not be used when the product, fiber or part so described is not composed wholly of new or virgin fiber which has never been reclaimed from any spun, woven, knitted, felted, bonded, or similarly manufactured product.

10. Amend § 303.36 by revising the introductory text of paragraph (a) and paragraphs (a)(2) and (b), to read as follows:

### **§ 303.36 Form of separate guaranty.**

(a) The following are suggested forms of separate guaranties under section 10 of the Act which may be used by a guarantor residing in the United States on or as part of an invoice or other document relating to the marketing or handling of any textile fiber products listed and designated therein, and showing the date of such invoice or other document and the signature and address of the guarantor.

\*       \*       \*       \*       \*

(2) *Guaranty based on guaranty.* Based upon a guaranty received, we guaranty that the textile fiber products specified herein are not misbranded nor falsely nor deceptively advertised or invoiced under the provisions of the Textile Fiber Products Identification Act and rules and regulations thereunder.

NOTE: The printed name and address on the invoice or other document will suffice to meet the signature and address requirements.

(b) The mere disclosure of required information including the fiber content of a textile fiber product on a label or on an invoice or other document relating to its marketing or handling shall not be considered a form of separate guaranty.

11. Revise § 303.37 to read as follows:

**§ 303.37 Form of continuing guaranty from seller to buyer.**

Under section 10 of the Act, a seller residing in the United States may give a buyer a continuing guaranty to be applicable to all textile fiber products sold or to be sold. The following is the prescribed form of continuing guaranty from seller to buyer.

We, the undersigned, guaranty that all textile fiber products now being sold or which may hereafter be sold or delivered to \_\_\_\_\_ are not, and will not be misbranded or falsely or deceptively advertised or invoiced under the provisions of the Textile Fiber Products Identification Act and rules and regulations thereunder. We acknowledge that furnishing a false guaranty is an unlawful unfair and deceptive act or practice pursuant to the Federal Trade Commission Act, and certify that we will actively monitor and ensure compliance with the Textile Fiber Products Identification Act and rules and regulations thereunder during the duration of this guaranty. This guaranty is effective for one year from the date of this certification.

Dated, signed, and certified this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at

\_\_\_\_\_(City), \_\_\_\_

(State or Territory) \_\_\_\_\_ (name under which business is conducted.)

I certify that the information supplied in this form is true and correct.

\_\_\_\_\_  
Signature of Proprietor, Principal Partner,  
or Corporate Official

\_\_\_\_\_  
Name (Print or Type) and Title

12. Amend § 303.38 by revising paragraphs (a)(2), (b) and (c) to read as follows:

**§ 303.38 Continuing guaranty filed with Federal Trade Commission.**

(a) \* \* \*

(2) Continuing guaranties filed with the Commission shall continue in effect for one year unless revoked earlier. The guarantor shall promptly report any change in business status to the Commission.

\* \* \* \* \*

(b) Prescribed form for a continuing guaranty:



## CONTINUING GUARANTY FOR FIBER & FUR PRODUCTS

### BUSINESS INFORMATION

1. Legal Name of Guarantor Firm

2. Name under which Guarantor Firm does business, if different from legal name

3. Type of Company: ☐ Proprietorship ☐ Partnership ☐ Corporation

4. Address of Principal Office or Place of Business (Include Zip Code)

#### OPTIONAL INFORMATION:

Web Address:

Telephone Number:

Fax Number:

### UNDER WHICH LAW IS THE CONTINUING GUARANTY TO BE FILED?

5. Put an 'X' in the appropriate boxes.

☐

Under the Textile Fiber Products Identification Act (15 U.S.C. §§ 70-70k): The company named above, which manufactures, markets, or handles textile fiber products: (1) guarantees that any textile fiber product it sells, ships, or delivers will not be misbranded or falsely or deceptively advertised or invoiced; (2) acknowledges that furnishing a false guaranty is an unlawful unfair and deceptive act or practice pursuant to the Federal Trade Commission Act; and (3) certifies that it will actively monitor and ensure compliance with the Textile Fiber Products Identification Act and the Rules and Regulations issued under the Act during the duration of the guaranty.

☐

Under the Wool Products Labeling Act (15 U.S.C. §§ 68-68j): The company named above, which manufactures, markets, or handles wool products: (1) guarantees that any wool product it sells, ships, or delivers will not be misbranded; (2) acknowledges that furnishing a false guaranty is an unlawful unfair and deceptive act or practice pursuant to the Federal Trade Commission Act; and (3) certifies that it will actively monitor and ensure compliance with the Wool Products Labeling Act and the Rules and Regulations issued under the Act during the duration of the guaranty.

☐

Under the Fur Products Labeling Act (15 U.S.C. §§ 69-69k): The company named above, which manufactures, markets, or handles fur products: (1) guarantees that any fur product it sells, ships, or delivers will not be misbranded or falsely or deceptively advertised or invoiced; (2) acknowledges that furnishing a false guaranty is an unlawful unfair and deceptive act or practice pursuant to the Federal Trade Commission Act; and (3) certifies that it will actively monitor and ensure compliance with the Fur Products Labeling Act and the Rules and Regulations issued under the Act during the duration of the guaranty.

### CERTIFICATION

I hereby certify that the information provided on this form is true and correct.

6. Signature of proprietor, principal partner, or corporate official

7. Name (Please print or type)

8. Title

9. City and State where signed

10. Date

### INSTRUCTIONS

The Textile Fiber Products Identification Act, the Wool Products Labeling Act, and the Fur Products Labeling Act provide that any marketer or manufacturer of fiber or fur products covered by those Acts may file a continuing guaranty with the Federal Trade Commission. The person signing and certifying the guaranty must reside in the United States. Use this form to file such guaranties with the Federal Trade Commission.

In completing this form, please observe the following:

(a) All appropriate blanks on the form should be filled in. Include your Zip Code in item 4.

(b) In item 6, signature of proprietor, partner, or corporate official of guarantor firm.

(c) Send two completed, signed original copies to:

Federal Trade Commission  
Division of Enforcement  
600 Pennsylvania Ave., NW  
Washington, DC 20580

(d) Do not fax application - mail signed originals only.

**Length of Guaranty:**  
Continuing guaranties are effective for one year from certification date.

**Changes:**  
The guarantor must immediately notify the Commission in writing of any change in business status. Any change in the address of the guarantor's principal office and place of business must also be promptly reported.

DO NOT USE THIS SPACE

Filed \_\_\_\_\_ 20\_\_\_\_

FEDERAL TRADE COMMISSION

(c) Any person who has a continuing guaranty on file with the Commission may, during the effective dates of the guaranty, give notice of such fact by setting forth on the invoice or other document covering the marketing or handling of the product guaranteed the following:

Continuing guaranty under the Textile Fiber Products Identification Act filed with the Federal Trade Commission.

\* \* \* \* \*

13. Amend § 303.41 by revising paragraph (a) as follows:

**§ 303.41 Use of fiber trademarks and generic names in advertising.**

(a) In advertising textile fiber products, the use of a fiber trademark or a generic fiber name shall require a full disclosure of the fiber content information required by the Act and regulations in at least one instance in the advertisement.

\* \* \* \* \*

14. Amend § 303.42, by revising paragraph (a) to read as follows:

**§ 303.42 Arrangement of information in advertising textile fiber products.**

(a) Where a textile fiber product is advertised in such manner as to require disclosure of the information required by the Act and regulations, all parts of the required information shall be stated in immediate conjunction with each other in legible and conspicuous type or lettering of equal size and prominence. In making the required disclosure of the fiber content of the product, the generic names of fibers present in an amount 5 percent or more of the total fiber weight of the product, together with any fibers disclosed in accordance with § 303.3(a),

shall appear in order of predominance by weight, to be followed by the designation “other fiber” or “other fibers” if a fiber or fibers required to be so designated are present. The advertisement need not state the percentage of each fiber.

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15. Revise § 303.44 to read as follows:

**§ 303.44 Products not intended for uses subject to the Act.**

Textile fiber products intended for uses not within the scope of the Act and regulations or intended for uses in other textile fiber products which are exempted or excluded from the Act shall not be subject to the labeling and invoicing requirements of the Act and regulations: *Provided*, An invoice or other document covering the marketing or handling of such products is given, which indicates that the products are not intended for uses subject to the Textile Fiber Products Identification Act.

16. Revise § 303.45 to read as follows:

**§ 303.45 Coverage and exclusions from the act.**

(a) The following textile fiber products are subject to the Act and regulations, unless excluded from the Act’s requirements in paragraph (b) of this section:

- (1) Articles of wearing apparel;
- (2) Handkerchiefs;
- (3) Scarfs;
- (4) Beddings;
- (5) Curtains and casements;

- (6) Draperies;
- (7) Tablecloths, napkins, and doilies;
- (8) Floor coverings;
- (9) Towels;
- (10) Wash cloths and dish cloths;
- (11) Ironing board covers and pads;
- (12) Umbrellas and parasols;
- (13) Batts;
- (14) Products subject to section 4(h) of the Act;
- (15) Flags with heading or more than 216 square inches (13.9 dm<sup>2</sup>) in size;
- (16) Cushions;
- (17) All fibers, yarns and fabrics (including narrow fabrics except packaging ribbons);
- (18) Furniture slip covers and other covers or coverlets for furniture;
- (19) Afghans and throws;
- (20) Sleeping bags;
- (21) Antimacassars and tidies;
- (22) Hammocks; and
- (23) Dresser and other furniture scarfs.

(b) Pursuant to section 12(b) of the Act, all textile fiber products other than those identified in paragraph (a) of this section, and the following textile fiber products, are excluded from the Act's requirements:

(1) Belts, suspenders, arm bands, permanently knotted neckties, garters, sanitary belts, diaper liners, labels (either required or non-required) individually and in rolls, looper clips intended for handicraft purposes, book cloth, artists' canvases, tapestry cloth, and shoe laces.

(2) All textile fiber products manufactured by the operators of company stores and offered for sale and sold exclusively to their own employees as ultimate consumers.

(3) Coated fabrics and those portions of textile fiber products made of coated fabrics.

(4) Secondhand household textile articles which are discernibly secondhand or which are marked to indicate their secondhand character.

(5) Non-woven products of a disposable nature intended for one-time use only.

(6) All curtains, casements, draperies, and table place mats, or any portions thereof otherwise subject to the Act, made principally of slats, rods, or strips, composed of wood, metal, plastic, or leather.

(7) All textile fiber products in a form ready for the ultimate consumer procured by the military services of the United States which are bought according to specifications, but shall not include those textile fiber products sold and distributed through post exchanges, sales commissaries, or ship stores; provided, however, that if the military services sell textile fiber products for nongovernmental purposes the information with respect to the fiber content of such products shall be furnished to the purchaser thereof who shall label such

products in conformity with the Act and regulations before such products are distributed for civilian use.

(8) All hand woven rugs made by Navajo Indians which have attached thereto the “Certificate of Genuineness” supplied by the Indian Arts and Crafts Board of the United States Department of Interior. The term Navajo Indian means any Indian who is listed on the register of the Navajo Indian Tribe or is eligible for listing thereon.

(c) The exclusions provided for in paragraph (b) of this section shall not be applicable:

(1) if any representations as to the fiber content of such products are made on any label or in any advertisement without making a full and complete fiber content disclosure on such label or in such advertisement in accordance with the Act and regulations with the exception of those products excluded by paragraph (b)(5) of this section; or

(2) If any false, deceptive, or misleading representations are made as to the fiber content of such products.

(d) The exclusions from the Act provided in paragraph (b) of this section are in addition to the exemptions from the Act provided in section 12(a) of the Act and shall not affect or limit such exemptions.

By direction of the Commission.

Donald S. Clark  
Secretary